IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Second day of February Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL ORIGINAL PETITION No.673, 675 & 677 of 2021

N.UMASHANKAR @ N.M.UMASHANKAR [PETITIONER IN CRL.O.P.NO.673/2021]

SARAVANAKUMAR [PETITIONER IN CRL.O.P.NO.675/2021]

V.JANARTHANAN [PETITIONER IN CRL.O.P.NO.677/2021]
N.ARUNKUMAR

Vs

THE ASSISTANT DIRECTOR [RESPONDENT IN ALL THE PETITIONS]
DIRECTORATE OF ENFORCEMENT,
GOVERNMENT OF INDIA,
CHENNAI ZONE -2,
3RD FLOOR, 3RD BLOCK,
SHASTRI BHAWAN, HADDOWS ROAD,
CHENNAI-600 006.
ECIR.NO.ECIR/MDSZO/04/2018 DATED 09.07.2018.

For Petitioner : M/S.JAYAPRAKSH, Advocate [CRL.O.P.NO.673/2021]

For Petitioner : M/S.B.SIDDESWARAN, Advocate [CRL.O.P.NO.675/2021]

For Petitioner : M/S.R.JAYAPRAKASH, Advocate [CRL.O.P.NO.677/2021]

For Respondent : M/S.RAJINISH PATHIYIL, Special Public Prosecutor
Directorate of Enforcement
[IN ALL THE PETITIONS]

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

M.SATHYANARAYANAN, J.

The petitioners are arrayed as A6, A8, A5 and A7 respectively and they seek bail in respect of the case registered by the respondent in ECIR No.ECIR/MDSZO/04/2018 dated 09.07.2018 for the commission of offence under Section 3 of the Prevention of Money-Laundering Act, 2002, which is punishable under Section 4 of the said Act.

2. This case is having a long and checkered history and it is relevant to narrate the following facts which are necessary and relevant for the disposal of these petitions for bail filed by A6, A8, A5 and A7 respectively.

2.1. W.P.No.8084 of 2017 was filed by Tvl.K.Ramamurthy and 20 others, praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 therein, namely, (i) The Securities Exchange Board of India [SEBI], Southern Regional Office, Chennai-600002; (ii) The Inspector General of Registration, Chennai-600028 and (iii) The Inspector of Police, Economic Offences Wing-II, Madurai-625 104 to allow the sale of the assets of M/s/Disc Assets Lead India Limited [in short "DALIL"], represented by it's Managing Director Thiru.V.Janarthanan - A5 / one of the petitioners in Crl.O.P.No.677 of 2021, by appointing a retired Judge of this Court or an Advocate Commissioner to settle the depositors of the said company.

2.2. EOW-II, Madurai, even prior to filing of the said writ petition, on the basis of complaint given by one Pechiammal, has registered a case in Crime No.6 of 2016 on 02.06.2016 against M/s.Disc Agro Tech Limited, Madurai-14 and Tvl.Uma Shankar, Janarthanan and Arun Kumar of Madurai [A6, A5 and A7] for the alleged commission of offences under Section 406, 420 and 120(B) of the Indian Penal Code [in short "IPC"] as well as Section 5 of the Tamil Nadu Protection of Interest of Depositors [in Financial Establishment] Act, 1997, [in short "TNPID Act"].

2.3. A Division Bench of this Court, vide order dated 04.04.2017 made in W.P.No.8084 of 2017 had appointed Hon'ble Mr.Justice G.M.Akbar Ali, a retired Judge of this Court, to act as Court Commissioner to address the grievances of the depositors and other persons similarly placed and to submit a Preliminary Report after hearing both sides, so that further orders could be passed. The Court Commissioner was in seizin of the matter and during the said period, A5 namely Mr.V.Janarthanan, Managing Director of DALIL, Madurai, has submitted a representation dated 10.06.2017 along with enclosures for a Scheme of Settlement. This Court, vide order passed today, has rejected the said settlement proposal.

2.4. The Hon'ble First Bench of this Court, vide order dated 11.10.2017, made in W.P.Nos.8084 and 18371 of 2017, had discharged Hon'ble Mr.Justice G.M.Akbar Ali (Retd.) and in his place, had appointed a Committee of Administrator headed by Hon'ble Mr.Justice N.Paul Vasanthakumar, retired Chief Justice of Jammu & Kashmir High Court, with two Senior Advocates, namely Tvl.B.Kumar and M.S.Krishnan, who have been assisting the Court as Amicus Curiae and also Mr.C.Manishankar, Senior Advocate and Additional Advocate

General and in addition to that, also included a competent authority under TNPID Act viz., The Additional Commissioner of Land Administration or a person nominated by the Additional Commisioner of Land Administration, not below the rank of Joint Secretary to the State Government; two nominees of the Revenue Secretary to the State of Tamil Nadu of the rank of Revenue Divisional Officer; a nominee of the Additional Director General of Police, EOW, not below the rank of Superintendent of Police and a nominee of the Regional Director, SEBI not below the rank of Deputy General Manager.

2.5. The Committee of Administrator took charge of the administration and filed series of reports, based on which various orders came to be passed including sale of some of the assets. In the subsequent order dated 16.03.2018, the Hon'ble First Bench of this Court, having taken note of the fact that numberous applications are filed in relation to the Company or it's Directors before the Madurai Bench of this Court, had ordered to transfer all matters perttaining to DADIL and/or its erstwhile Directors and/or present Directors to the Principal Bench and any further applications shall also be filed before this Court with a further direction that the Registry of the Madurai Bench of this Court shall not entertain any application relating to DALIL or any or its erstwhile or present Directors before the Madurai Bench. The Hon'ble First Bench of this Court has released the said matters with a direction to list the matter before the Division Bench presided over by M.Sathyanarayanan, J. Accordingly, this Bench took up the said matter by way of Specially Ordered and passed series of orders, based on the memos filed by the Chairman of the Committee of Administrator.

2.6. Now, coming to the petitions for bail, the petitioners were arrested on 09.07.2018 for the alleged commission of the offence under Section 3 of the PMLA Act, punishable under Section 4 of the said Act.

3. Mr.R.Jayaprakash, learned counsel appearing for the petitioners assisted by Ms.Mrakhi and Ms.I.Zuriyath Fathima, the learend counsel on record would submit that the petitioners have fully cooperated with EOW-II, Madurai, who registered the case in Crime No.6 of 2016 on 02.06.2016 for the alleged commission of offences under Sections 406, 402, 120B IPC r/w. Section 5 of the TNPID Act and they were initially granted Anticipatory Bail and later on it came to be cancelled on the petition moved by the prosecution and some of the petitioners were put behind the bar pursuant to the cancellation of bail and they also handed over very many title deeds relating to properties in favour of the Committee of Administrator and they also brought some of the properties for sale by way of public auction and it did not fructify and also conducted fresh auction and the bids received have been placed before this Court for passing orders and the said fact would reveal that the petitioners/accused have fully cooperated with the investigation by EOW. It is also pointed by the learned counsel appearing for the petitioners that the case in which the petitioners were arrested, was admittedly registered on 09.07.2018 and they also

fully cooperated with the investigation and however, to their shock and surprise, they were arrested on 09.12.2020 and remanded to judicial custody on 10.12.2020 and in the light of the fact that they have fully cooperated with the respondent/investigating agency and that the documents pertaining to landed properties have also been handed over the Committee of Administrator, who had also taken steps to auction the properties for the purpose of disbursement to the investors/depositors, their custody is no longer required and would further add that the petitioners are willing to abide by any conditions to be imposed by this Court.

4. *Per contra*, Mr.Rajinish Pathiyil, learned Special Public Prosecutor appearing for the respondent/Directorate of Enforcement had drawn the attention of this Court to the counter statement dated 18.01.2021 and would submit that the orders passed by SEBI dated 30.03.2016 had been taken note of, in and by which the said statutory authority had directed DALIL to stop the business activities and refund the depositors and till date, no refunds were done by the Company and despite the subsistence of the said order, DALIL had collected huge amounts from the customers from October 2015 to June 2017 through another entity, namely M/s.Aiyan Marketing Solutions Private Limited and issued receipts in the name of new entity in the form of monthly payments as "Subscription from Magazines" while there was no publication of magazine. It is also submitted by the learned Special Public Prosecutor that the investigation so far revealed that the money collected was diverted under the guise of investment in subsidiaries, out of which three entities did not do any business at all and that apart, in respect of depositors, neither lands were allotted nor money was refunded by them. In Para 2(j) of the counter statement, a tabular column has also been given as to the collections and deposits into the bank accounts of DALIL to the tune of Rs.641.47 Crores and M/s.Dal Marketing Solutions Limited to the tune of Rs.431 Crores and also not fully cooperating with the investigation and the progress made in the investigation would also reveal that a huge sum of Rs.1137 Crores have been collected and further sums has also been collected, for which details are being collected.

5. It is the further submission of the learned Special Public Prosecutor that despite cancellation of Anticipatory Bail by this Court in Crime No.6 of 2016 registered by EOW, Madurai, some of the petitioners were put into custody and they also came out on bail, but still they are not cooperating with the investigation and wielding the whereabouts of the parted money and the acts of the petitioners are nothing but only leads to the offence of money laundering. The learned Special Public Prosecutor also submitted that the investigation is in the preliminary stage and in the event of the accused coming out on bail, they would defenitely hamper the investigation and tamper the witnesses and prays for dismissal of these petitions.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The Hon'ble Supreme Court of India in ***Nikesh Tarachand Shah v. Union of India and another [2018 (2) SCC (Crl.) 302]*** decided on 23.11.2017 had declared Section 45(1) of the PMLA Act, 2002 insofar as it imposed two further stringent conditions for release on bail as unconstitutional, as it violates Articles 14 and 21 of the Constitution of India with a further direction that bail applications have to be taken up by the respective Court which denied the same and the application for bail has to be heard under Section 45 of the PMLA Act on merits without applying twin stringent conditions.

8. Section 45(1) of PMLA Act, 2002 says that "[....... no person accused of an offence (under this Act) shall be released on bail or on his own bond unless..] came by way of substitution by Act 13 of 2018. Similarly first proviso to Section 45(1) of PMLA Act came to be inserted by the very same Act with effect from 19.04.2018.

9. A perusal of the materials placed including the typed set of documents would prima facie reveal that the statutory authority, namely, SEBI had taken note of the said development and passed an order dated 20.08.2015 and also noted that DALIL is illegally mobilizing funds from the public, which *prima facie* amounts to fradulent practice in terms of Regulation 4(2)(t) of the SEBI [Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market] Regulations, 2003 and also issued directions to some of the accused, namely Tvl.V.Janarthanan, N.Arun Kumar and N.M.Umashankar and two other persons not to collect fresh money and also other directions. The said order was ordered to be treated as a Show Cause Notice with a liberty to submit their response and a further order came to be passed by SEBI on 21.09.2016.

10. DALIL, challenging the said order, has filed an appeal before the Securities Appellate Tribunal at Mumbai in Appeal No.175 of 2016 and pending disposal of the same, took out a Miscellaneous Application in M.A.No.179 of 2016, praying for appropriate direction for disposal of the assets belonging to DALIL so that the sale proceeds can be paid to the investors and the said Miscellaneous Application came to be disposed on 13.10.2016 by taking note of the order dated 21.09.2016 passed by the Whole-Time Member of SEBI and made it clear that in terms of the said order, it would be open to the applicants to sell their assets in consulation with SEBI and utilize the sale proceeds to pay the investors.

11. A Scheme of Settlement was mooted by DALIL in W.P.Nos.8084 of 2017 and 18371 of 2017 and after taking into consideration the arguments advanced and the materials placed before this Court, has passed a detailed order rejecting the settlement proposal on the ground of lack of genuineness and bonafide. DALIL, under the garb of collection of deposit for the purchase of properties, said to have collected a sum of Rs.1137 Crores from 12,27,274 depositors and the said fact has also been recorded by a Division Bench of this Court, vide order dated 04.04.2017 made in W.P.No.8084 of 2017.

12. The petitioners have been granted Anticipatory Bail by this Court and on account of non-cooperative attitude exhibited, it came to be cancelled and they were put behind the bars and then only they have submitted documents relating to some of the properties, despite the fact that they enjoyed freedom for nearly two years.

13. It is a well settled position of law that preliminary consideration for granting or non-granting bail for non-bailable offence is the nature and gravity of the offence and the Courts cannot expected to go into the question of credibility or reliability of the witnesses, as it can be tested during the course of trial.

14. In ***Y.G.Jagan Mohan Reddy v. Central Bureau of Investigation [(2013) 7 SCC 439]***, the bail application submitted by the appellant/accused seeking bail for the alleged commission of offence under the Prevention of Corruption Act, 1988 came to be rejected by the High Court of Andhra Pradesh and it was put to challenge. It is relevant to extract para Nos.34 and 35 of the said decision:

> ***"34.*** *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> ***35.*** *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

15. It is also a well settled position of law that while granting bail, it is obligatory on the part of the Court to consider the factors, namely (i) nature of accusation and evidence, (ii) severity of punishment which conviction will entail, (iii) reasonable apprehension of witnesses being tampered with (iv) prima facie satisfaction of the Court in support of the charge and (v) likelihood of the accused fleeing from justice and tampering the prosecution witnesses.

16. This Court, taking into consideration the above facts and circumstances, especially the seriousness and gravity of the crime and also the collection of huge amounts from depositors, non-payment of dues to the depositors on time and non cooperative attitude

exhibited by the petitioners/accused, is of the considered view that it is not a fit case to grant bail at this stage.

17. In the result, all these Criminal Original Petitions for bail are dismissed.

-sd/-
02/02/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE
CHENNAI.

2 THE ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT,
GOVERNMENT OF INDIA, CHENNAI ZONE -2,
3RD FLOOR, 3RD BLOCK,
SHASTRI BHAWAN, HADDOWS ROAD,
CHENNAI-600 006.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

+1 CC to M/S.MRAKHI Advocate on payment of necessary charges SR.NO.1021

+1 CC to M/S.B.SIDDESWARAN, Advocate on payment of necessary charges SR.NO.1022

+3 CC to M/S.RAJINISH PATHIYIL, Advocate on payment of necessary charges SR.NO.1061, 1062, 1060

+1 CC to M/S.R.JAYAPRAKASH, Special Public Prosecutor Directorate of Enforcement, on payment of necessary charges SR.NO.1023

CRL OP.673, 675 & 677 /2021

Date :02/02/2021

TA-04/02/2021